

Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

KARLA AYLEN, DDS PLLC, individually and on behalf of all others similarly situated,

Plaintiff,

V.

ASPEN AMERICAN INSURANCE
COMPANY,

Defendant.

No. 2:20-cv-00717-BJR

AMENDED COMPLAINT—CLASS ACTION

JURY DEMAND

I. INTRODUCTION

Plaintiff, KARLA AYLEN, DDS PLLC (“Aylen”), individually and on behalf of all other similarly situated members of the defined national class, and the defined Washington State subclasses (the “Class Members”), by and through the undersigned attorneys, brings this class action against Aspen American Insurance Company (“Aspen” or “Defendant”) and alleges as follows based on personal knowledge and information and belief:

II. JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because at least one member of the proposed Class and Washington subclass is a citizen of a state different from that of Defendant, the proposed Class

and subclass each consist of more than 100 class members, and the aggregate amount in controversy exceeds \$5,000,000. The Court has supplemental jurisdiction over Plaintiffs' state law claims under 28 U.S.C. § 1337.

2. This Court has personal jurisdiction over Defendant because Defendant is registered to do business in Washington, has sufficient minimum contacts in Washington, and otherwise intentionally avails itself of the markets within Washington through its business activities, such that the exercise of jurisdiction by this Court is proper. Moreover, the claims of Plaintiff and all of the Washington subclass members in this case arise out of and directly relate to Defendant's contacts with Washington.

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(3) because the Court has personal jurisdiction over Defendant, a substantial portion of the alleged wrongdoing occurred in this District and the state of Washington, and Defendant has sufficient contacts with this District and the state of Washington.

4. Venue is proper in the District of Washington pursuant to 28 U.S.C. § 1331(b)(2) because a substantial part of the events or omissions giving rise to the claims at issue in this Complaint arose in this District. Plaintiff's place of business is located in Seattle, Washington, King County. This action is therefore appropriately filed in this District.

III. PARTIES

5. Plaintiff KARLA AYLEN, DDS PLLC, owns and operates a dental practice located at 11066 5TH Ave NE #208 Seattle, Washington 98125.

6. Defendant Aspen American Insurance Company is an insurance carrier incorporated and domiciled in the State of Texas, with its principal place of business in Rocky Hill, Connecticut.

7. Aspen is authorized to write, sell, and issue business insurance policies in all 50 States, the District of Columbia, Puerto Rico and the U.S. Virgin Islands. Aspen conducted business within these states by selling and issuing insurance policies to policyholders, including Plaintiff Aylen.

IV. NATURE OF THE CASE

1. This lawsuit is filed to ensure that Plaintiff and other similarly-situated policyholders receive the insurance benefits to which they are entitled and for which they paid.

2. Defendant Aspen issued one or more “all risk” insurance policies to Plaintiff, including Building, Blanket Dental Practice Personal Property and Income Coverage Part and related endorsements, insuring Plaintiff’s property and business practice and other coverages, with effective dates of January 1, 2020 to January 1, 2021.

3. Plaintiff's business property includes property owned and/or leased by Plaintiff and used for general business purposes for the specific purpose of dentistry and related business activities.

4. Defendant Aspen's insurance policy issued to Plaintiff promises to pay Plaintiff for "ALL RISK OF DIRECT PHYSICAL LOSS" to covered property and includes coverage for risks of both "loss of or damage to" covered property.

5. Defendant Aspen's Blanket Dental Practice Personal Property and Income Coverage Part issued to Plaintiff includes Practice Income Coverage, Extra Expense Coverage, Extended Practice Income Coverage, Civil Authority Coverage, and coverage for expenses necessary to protect covered property from future damage in the event of a loss.

6. On information and belief, Aspen insures thousands of businesses throughout Washington and the rest of the United States under materially identical policies.

1 7. Plaintiff paid all premiums for the coverage when due.

2 8. On or about January 2020, the United States of America saw its first cases of
3 persons infected by COVID-19, which has been designated a worldwide pandemic.

4 9. COVID-19 is a highly contagious virus that rapidly and easily spreads; it
5 continues to spread across the United States including Washington State. In many infected
6 persons, the virus causes severe illness and requires hospitalization, including intubation. The
7 virus has killed at least 200,000 people in the United States to date. Persons who survive the
8 virus have experienced ongoing cognitive and physical impacts from the virus, even after the
9 virus is no longer actively detected in their bodies.

10 10. The virus is a physical substance that spreads person to person through respiratory
11 droplets produced when an infected person breaths, talks, coughs or sneezes. It also spreads
12 when virus respiratory droplets are exhaled and aerosolized, and deposited on a surface or object
13 (e.g., furniture, dentistry instruments, tables, door knobs, chairs, touch screens) and those objects
14 are then touched by another person who then touches their own mouth, nose or eyes. COVID-19
15 is caused by a novel (new) coronavirus that has not previously been seen in humans.¹

16 11. COVID-19 remains stable and transmittable in aerosols for up to three hours and
17 up to two or three days on surfaces. Persons infected with COVID-19 can be asymptomatic yet
18 will still spread the virus. Guidance issued by the United States Centers for Disease Control &
19 Prevention (CDC) recommends avoiding indoor activities, adhering to strict sanitation protocols,
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¹ See, e.g., *Coronavirus Disease 2019 (COVID-19): Frequently Asked Questions* (updated Sept. 18, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/faq.html>.

1 and maintaining social distance of at least six feet from others in order to minimize the spread of
 2 COVID-19.²

3 12. The CDC also recognizes that “dental settings have unique characteristics that
 4 warrant specific infection control considerations,” and that the most critical dental services must
 5 be prioritized in a way that minimizes harm to patients from delaying care while minimizing
 6 harm to personnel and patients from potential exposure to COVID-19 infection.³

7 13. In March 2020, the American Dental Association (“ADA”) recommended that
 8 dental providers close their offices for all but emergency care.⁴ Upon expiration of that guideline
 9 in April 2020, the ADA recommended that dental providers keep their offices closed to all but
 10 urgent and emergency procedures.⁵

11 14. As of September 19, 2020, at least 82,548 persons in Washington State have
 12 tested positive for COVID-19; 7,262 have been hospitalized, and 2,037 have died due to the
 13 COVID-19 virus.

14 15. As of September 20, 2020, at least 21,459 persons in King County alone have
 15 tested positive for COVID-19; 2,313 have been hospitalized, and over 750 have died due to the
 16 COVID-19 virus.

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 21 ² *Coronavirus Disease 2019 (COVID-19): Personal and Social Activities*, Centers for Disease Control & Prevention
 22 (updated Sept. 11, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/personal-social-activities.html>.

23 ³ *Coronavirus Disease 2019 (COVID-19): Guidance for Dental Settings*, Centers for Disease Control & Prevention
 24 (updated August 28, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/hcp/dental-settings.html>

25 ⁴ American Dental Association press room releases: <https://www.ada.org/en/press-room/news-releases/2020-archives/march/ada-calls-upon-dentists-to-postpone-elective-procedures> (last visited September 24, 2020).

26 ⁵ American Dental Association press room releases: <https://www.ada.org/en/press-room/news-releases/2020-archives/april/summary-of-ada-guidance-during-the-covid-19-crisis> (last visited September 24, 2020).

1 16. The percentage of positive results returned from COVID-19 testing conducted in
 2 King County between March and April, 2020 rose above 10% for extended periods during that
 3 window. King County's testing positivity rates dropped briefly in mid-June, 2020, and rose
 4 steadily again at the end of June through August, 2020.⁶ In the second half of September, 2020,
 5 cases appear to be on the rise again.
 6

7 17. Public health data throughout the United States, and on a state-by-state basis,
 8 shows that COVID-19 has been detected in every state.
 9

10 18. Public health data throughout the United States shows the rate of positive testing
 11 by state, the numbers of persons by state who have been diagnosed with COVID-19, the number
 12 of persons hospitalized due to COVID-19, the number of deaths from COVID-19, and other
 13 related statistics.⁷
 14

15 19. The presence of any COVID-19 aerosolized or suspended droplets or particles in
 16 the air or otherwise circulating in an indoor environment renders that physical space, or physical
 17 property, unsafe and unusable.
 18

19 20. The presence of any COVID-19 aerosolized or suspended droplets or particles in
 20 the air or otherwise circulating in an indoor environment causes direct physical damage to
 21 property and direct physical loss of property.
 22

23 21. The presence of any COVID-19 droplets or particles on physical surfaces renders
 24 items of physical property unsafe and unusable.
 25

26 ⁶ Total Counts by Date For All King County (Sept. 14, 2020), <https://www.kingcounty.gov/depts/health/covid-19/data/daily-summary.aspx> (data file download).

7 See, e.g., The New York Times, Covid in the U.S.: Latest Map and Case Count (reflecting COVID-19 statistics, on a state-by-state, county-by-county, and aggregated basis since March 2020),
<https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html?action=click&module=Top%20Stories&pgtype=Homepage> (last visited Sept. 23, 2020).

1 22. The presence of any COVID-19 droplets or particles on physical surfaces causes
 2 direct physical damage to property and direct physical loss of property.

3 23. The presence of people infected with or carrying COVID-19 particles at premises
 4 renders the premises, including property located at that premises, unsafe and unusable, resulting
 5 in direct physical damage and direct physical loss to the premises and property.

6 24. Loss of functionality of property that has not been physically altered constitutes
 7 direct physical loss of property and/or direct physical damage to property.

8 25. On February 29, 2020, Washington Governor Jay Inslee issued Proclamation 20-
 9 5, declaring a State of Emergency for all counties in the State of Washington as a result of the
 10 COVID-19 outbreak. Thereafter, he issued a series of proclamations and orders affecting many
 11 persons and businesses in Washington, whether infected with COVID-19 or not, requiring
 12 certain public health precautions.

13 26. On March 19, 2020, Governor Inslee issued a “PROCLAMATION BY THE
 14 GOVERNOR AMENDING PROCLAMATION 20-05: 20-24 Restrictions on Non Urgent
 15 Medical Procedures,” which prohibited dental practitioners from providing dental services but
 16 for urgent and emergency procedures:

17 WHEREAS, the health care person protective equipment supply chain in
 18 Washington State has been severely disrupted by the significant increased use of
 19 such equipment worldwide, such that there are now critical shortages of this
 20 equipment for health care workers. To curtail the spread of the COVID-19
 21 pandemic in Washington State and to protect our health care workers as they
 22 provide health care services, it is necessary to immediately prohibit all hospitals,
 23 ambulatory surgery centers, and dental orthodontic, and endodontic offices in
 24 Washington State from providing health care services, procedures and surgeries
 25 that require personal protective equipment, which if delayed, are not anticipated
 26 to cause harm to the patient within the next three months.

27. Proclamation 20-24 provides that one of the reasons it was issued was that “the
 28 worldwide COVID-19 pandemic and its progression throughout Washington State continues to
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1 threaten the life and health of our people as well as the economy of Washington State, and
 2 remains a public disaster affecting life, health, property or the public peace.”

3 28. On information and belief, Proclamation 20-24 refers to the health of
 4 Washingtonians and property damage throughout Washington State, including King County
 5 where Plaintiff’s business is located.

6 29. On March 23, 2020, Mr. John Weisman, Secretary of Washington State’s
 7 Department of Health, issued a list of directives and orders regarding healthcare matters and
 8 mandated that all healthcare practitioners, including dental practitioners, cease all elective and
 9 non-urgent medical procedures and appointments as of the close of business on March 24, 2000,
 10 and throughout the duration of the catastrophic health emergency.

11 30. On March 25, 2020, the Washington State Dental Association recommended that
 12 all dental practices follow the mandates and orders of the Washington Department of Health and
 13 postpone all non-emergency or non-urgent dental procedures throughout the duration of the
 14 catastrophic health emergency.

15 31. On March 30, 2020, Governor Inslee issued Order Number 20-03-30-01 affecting
 16 persons and residents within the State of Washington, which includes a “Stay-at-Home Order”
 17 requiring all persons living in Washington to stay in their homes or places of residences except
 18 under certain specified circumstances.

19 32. Governor’s Inslee’s Proclamations and Orders related to COVID-19 have been
 20 extended and modified from time to time.

21 33. Governors and civil authorities in other states have issued similar orders and
 22 proclamations, for similar reasons.

1 34. Loss caused by COVID-19 and/or Governor Inslee's orders and proclamations,
 2 rendered Plaintiff's property unusable for its intended and insured purpose.

3 35. Plaintiff's property sustained direct physical loss and/or direct physical property
 4 damage related to COVID-19, and/or the proclamations and orders.

5 36. Plaintiff's property will continue to sustain direct physical loss or damage covered
 6 by the Aspen policy or policies, including but not limited to practice coverage interruption, extra
 7 expense, interruption by civil authority, and other expenses.

8 37. Plaintiff has been unable to use her physical property for its intended business
 9 purposes.

10 38. As a result of the above, Plaintiff has experienced and will experience loss
 11 covered by the Aspen policy or policies.

12 39. Plaintiff complied with all requirements in the Aspen policy or policies.

13 40. Plaintiff contacted her insurance agent in or about March 2020 to submit a claim
 14 for losses covered by the Aspen Policy.

15 41. On or about May 5, Aspen through its agent told Plaintiff by voicemail message
 16 that Aspen "had determined that their policies do not provide coverage for business interruption
 17 arising out of the [sic] COVID-19 and they will send letters out to the policyholders to confirm."

18 42. Aspen did not conduct any investigation into Plaintiff's loss.

19 43. Aspen denied Plaintiff's claim based on its internal policy to deny business
 20 interruption claims related to COVID-19.

21 44. Aspen's denial of Plaintiff's claim was not based on any factor unique or
 22 particular to Plaintiff.

45. Upon information and belief, Aspen has denied and will deny coverage to other similarly situated policyholders based on its policy to deny business interruption claims related to COVID-19.

V. CLASS ACTION ALLEGATIONS

46. This matter is brought by Plaintiff on behalf of itself and those similarly situated, under Federal Rules of Civil Procedure 23(b)(1), 23(b)(2), and 23(b)(3).

47. The Classes and Subclasses that Plaintiff seeks to represent are defined as:

A. ***Practice Income Breach of Contract Class:*** All persons and entities in the United States issued an Aspen policy with Practice Income Coverage who suffered a suspension of their practice at the covered premises related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities and whose Practice Income claim has been denied by Aspen.

B. ***Practice Income Breach of Contract Washington Subclass:*** All persons and entities in the State of Washington issued an Aspen policy with Practice Income Coverage who suffered a suspension of their practice at the covered premises related to COVID-19 and/or orders issued by Governor Inslee, and/or other civil authorities and whose Practice Income claim has been denied by Aspen.

C. ***Practice Income Declaratory Relief Class:*** All persons and entities in the United States issued an Aspen policy with Practice Income Coverage who suffered a suspension of their practice at the covered premises related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities.

D. ***Practice Income Declaratory Relief Washington Subclass:*** All persons and entities in the State of Washington issued an Aspen policy with Practice Income

1 Coverage who suffered a suspension of their practice at the covered premises related to
 2 COVID-19 and/or orders issued by Governor Inslee, and/or other civil authorities.

3 E. ***Extra Expense Breach of Contract Class:*** All persons and entities in the
 4 United States issued an Aspen policy with Extra Expense Coverage who incurred
 5 expenses while seeking to minimize the suspension of business at the covered premises in
 6 connection with COVID-19 and/or orders issued by Governor Inslee, other Governors,
 7 and/or other civil authorities and whose Extra Expense claim has been denied by Aspen.

8 F. ***Extra Expense Breach of Contract Washington Subclass:*** All persons
 9 and entities in the State of Washington issued an Aspen policy with Extra Expense
 10 Coverage who incurred expenses while seeking to minimize the suspension of business at
 11 the covered premises in connection with COVID-19 and/or orders issued by Governor
 12 Inslee, and/or other civil authorities and whose Extra Expense claim has been denied by
 13 Aspen.

14 G. ***Extra Expense Declaratory Relief Class:*** All persons and entities in the
 15 United States issued an Aspen policy with Extra Expense Coverage who incurred
 16 expenses while seeking to minimize the suspension of business at the covered premises in
 17 connection with COVID-19 and/or orders issued by Governor Inslee, other Governors,
 18 and/or other civil authorities.

19 H. ***Extra Expense Declaratory Relief Washington Subclass:*** All persons and
 20 entities in the State of Washington issued an Aspen policy with Extra Expense Coverage
 21 who incurred expenses while seeking to minimize the suspension of business at the
 22 covered premises in connection with COVID-19 and/or orders issued by Governor Inslee,
 23 and/or other civil authorities.

1 I. ***Extended Practice Income Breach of Contract Class:*** All persons and
 2 entities in the United States issued an Aspen policy with Extended Practice Income
 3 Coverage who suffered a suspension of their practice at the covered premises related to
 4 COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil
 5 authorities and whose Extended Practice Income claim has been denied by Aspen.
 6

7 J. ***Extended Practice Income Breach of Contract Washington Subclass:***
 8 All persons and entities in the State of Washington issued an Aspen policy with Extended
 9 Practice Income Coverage who suffered a suspension of their practice at the covered
 10 premises related to COVID-19 and/or orders issued by Governor Inslee, and/or other civil
 11 authorities and whose Extended Practice Income claim has been denied by Aspen.
 12

13 K. ***Extended Practice Income Declaratory Relief Class:*** All persons and
 14 entities in the United States issued an Aspen policy with Extended Practice Income
 15 Coverage who suffered a suspension of their practice at the covered premises related to
 16 COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil
 17 authorities.
 18

19 L. ***Extended Practice Income Declaratory Relief Washington Subclass:*** All
 20 persons and entities in the State of Washington issued an Aspen policy with Extended
 21 Practice Income Coverage who suffered a suspension of their practice at the covered
 22 premises related to COVID-19 and/or orders issued by Governor Inslee, and/or other civil
 23 authorities.
 24

25 M. ***Civil Authority Breach of Contract Class:*** All persons and entities in the
 26 United States issued an Aspen policy with Civil Authority Coverage who suffered a
 suspension of their practice at the covered premises related to the impact of COVID-19

1 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities
 2 and whose Civil Authority claim has been denied by Aspen.

3 N. *Civil Authority Breach of Contract Washington Subclass:* All persons
 4 and entities in the State of Washington issued an Aspen policy with Civil Authority
 5 Coverage who suffered a suspension of their practice at the covered premises related to
 6 the impact of COVID-19 and/or orders issued by Governor Inslee, and/or other civil
 7 authorities and whose Civil Authority claim has been denied by Aspen.

8 O. *Civil Authority Declaratory Relief Class:* All persons and entities in the
 9 United States issued an Aspen policy with Civil Authority Coverage who suffered a
 10 suspension of their practice at the covered premises related to COVID-19 and/or orders
 11 issued by Governor Inslee, other Governors, and/or other civil authorities.

12 P. *Civil Authority Declaratory Relief Washington Subclass:* All persons and
 13 entities in the State of Washington issued an Aspen policy with Civil Authority Coverage
 14 who suffered a suspension of their practice at the covered premises related to COVID-19
 15 and/or orders issued by Governor Inslee, and/or other civil authorities.

16 48. Excluded from the Class are Defendant's officers, directors, and employees; the
 17 judicial officers and associated court staff assigned to this case; and the immediate family
 18 members of such officers and staff. Plaintiff Aylen reserves the right to amend the Class
 19 definition based on information obtained in discovery.

20 49. This action may properly be maintained on behalf of each proposed Class under
 21 the criteria of Rule 23 of the Federal Rules of Civil Procedure.

22 50. *Numerosity:* The members of the Class are so numerous that joinder of all
 23 members would be impractical. Plaintiff is informed and believes that each proposed Class and

1 Subclass contains hundreds of members. The precise number of class members can be
 2 ascertained through discovery, which will include Defendant's records of policyholders.
 3

4 **51. Commonality and Predominance:** Common questions of law and fact
 5 predominate over any questions affecting only individual members of the Class. Common
 6 questions include, but are not limited to, the following:

- 7 A. Whether the class members suffered covered losses based on common
 8 policies issued to members of the Class and Subclass;
- 9 B. Whether Aspen acted in a manner common to the Class and Subclass
 10 wrongfully denied claims for coverage relating to COVID-19 and/or orders issued by
 11 Governor Inslee, other Governors, and/or other civil authorities;
- 12 C. Whether Practice Income Coverage in Aspen's policies of insurance
 13 applies to a suspension of practice relating to COVID-19 and/or orders issued by
 14 Governor Inslee, other Governors, and/or other civil authorities;
- 15 D. Whether Extra Expense Coverage in Aspen's policies of insurance applies
 16 to efforts to minimize a loss relating to COVID-19 and/or orders issued by Governor
 17 Inslee, other Governors, and/or other civil authorities;
- 18 E. Whether Extended Practice Income Coverage in Aspen's policies of
 19 insurance applies to a suspension of practice relating to COVID-19 and/or orders issued
 20 by Governor Inslee, other Governors, and/or civil authorities;
- 21 F. Whether Civil Authority Coverage in Aspen's policies of insurance
 22 applies to a suspension of practice relating to COVID-19 and/or orders issued by
 23 Governor Inslee, other Governors, and/or civil authorities;

1 G. Whether Aspen has breached its contracts of insurance through a blanket
 2 denial of all claims based on business interruption, income loss or closures related to
 3 COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil
 4 authorities;

5 H. Whether, because of Defendant's conduct, Plaintiff and the class members
 6 have suffered damages; and if so, the appropriate amount thereof; and

7 I. Whether, because of Defendant's conduct, Plaintiff and the class members
 8 are entitled to equitable and declaratory relief, and if so, the nature of such relief.

9
 10 52. **Typicality:** Plaintiff's claims are typical of the claims of the members of the
 11 classes. Plaintiff and all the members of the classes have been injured by the same wrongful
 12 practices of Defendant. Plaintiff's claims arise from the same practices and course of conduct
 13 that give rise to the claims of the members of the Class and are based on the same legal theories.

14
 15 53. **Adequacy:** Plaintiff will fully and adequately assert and protect the interests of
 16 the classes and has retained class counsel who are experienced and qualified in prosecuting class
 17 actions. Neither Plaintiff nor its attorneys have any interests contrary to or in conflict with the
 18 Class.

19
 20 54. **Federal Rule of Civil Procedure 23(b)(1), the Risk of Inconsistent or Varying
 21 Adjudications and Impairment to Other Class Members' Interests:** Plaintiff seeks
 22 adjudication as to the interpretation, and resultant scope, of Defendant's policies, which are
 23 common to all members of the class. The prosecution of separate actions by individual members
 24 of the classes would risk inconsistent or varying interpretations of those policy terms and create
 25 inconsistent standards of conduct for Defendant. The policy interpretations sought by Plaintiff
 26 could also impair the ability of absent class members to protect their interests.

55. **Federal Rule of Civil Procedure 23(b)(2), Declaratory and Injunctive Relief:**

Defendant acted or refused to act on grounds generally applicable to Plaintiff and other members of the proposed classes making injunctive relief and declaratory relief appropriate on a classwide basis.

56. **Federal Rule of Civil Procedure 23(b)(3), Superiority:** A class action is superior to all other available methods of the fair and efficient adjudication of this lawsuit. While the aggregate damages sustained by the classes are likely to be in the millions of dollars, the individual damages incurred by each class member may be too small to warrant the expense of individual suits. Individual litigation creates a risk of inconsistent and/or contradictory decisions and the court system would be unduly burdened by individual litigation of such cases. A class action would result in a unified adjudication, with the benefits of economies of scale and supervision by a single court.

VI. CAUSES OF ACTION

Count One—Declaratory Judgment

(Brought on behalf of the Practice Income Coverage Declaratory Relief Class, Practice Income Coverage Declaratory Relief Washington Subclass, Extra Expense Declaratory Relief Class, Extra Expense Declaratory Relief Washington Subclass, Extended Practice Income Declaratory Relief Class, Extended Practice Income Declaratory Relief Washington Subclass, Civil Authority Relief Class, and Civil Authority Relief Washington Subclass)

57. Previous paragraphs alleged are incorporated herein.

58. This is a cause of action for declaratory judgment pursuant to the Declaratory Judgment Act, codified at 28 U.S.C. § 2201.

59. Plaintiff Aylen brings this cause of action on behalf of the Practice Income Coverage Declaratory Relief Class, Practice Income Declaratory Washington Subclass, Extra Expense Declaratory Relief Class, Extra Expense Declaratory Relief Washington Subclass

Extended Practice Income Declaratory Relief Class, Extended Practice Income Declaratory Relief Washington Subclass, Civil Authority Declaratory Relief Class, and Civil Authority Declaratory Relief Washington Subclass.

60. Plaintiff Aylen seeks a declaratory judgment declaring that Plaintiff Aylen's and class members' losses and expenses resulting from the interruption of their business are covered by the Policy.

61. Plaintiff Aylen seeks a declaratory judgment declaring that Aspen is responsible for timely and fully paying all such claims.

Count Two—Breach of Contract

(Brought on behalf of the Practice Income Coverage Breach of Contract Class, Practice Income Coverage Breach of Contract Washington Subclass, Extra Expense Breach of Contract Class, Extra Expense Breach of Contract Washington Subclass, Extended Practice Income Breach of Contract Class, Extended Practice Income Breach of Contract Washington Subclasses, Civil Authority Breach of Contract Class, and Civil Authority Breach of Contract Washington Subclass)

62. Previous paragraphs alleged are incorporated herein.

63. Plaintiff Aylen brings this cause of action on behalf of the Practice Income Coverage Breach of Contract Class, Practice Income Breach of Contract Washington Subclass, Extra Expense Breach of Contract Class, Extra Expense Breach of Contract Washington Subclass, Extended Practice Income Breach of Contract Class, Extended Practice Income Breach of Contract Washington Subclass, Civil Authority Breach of Contract Class, and Civil Authority Breach of Contract Washington Subclass.

64. The Policy is a contract under which Plaintiff Aylen and the class paid premiums to Aspen in exchange for Aspen's promise to pay Plaintiff Aylen and the class for all claims covered by the Policy.

65. Plaintiff Aylen has paid its insurance premiums.

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66. Plaintiff Aylen has been denied coverage for its losses covered by the Aspen policy.

67. Upon information and belief, Aspen has denied, and will continue to deny coverage for other similarly situated policyholders.

68. Denying coverage for the claim is a breach of the insurance contract.

69. Plaintiff Aylen is harmed by the breach of the insurance contract by Aspen.

VII. PRAYER FOR RELIEF

1. Class action status under Fed. R. Civ. P. 23.

2. A declaratory judgment that the policy or policies cover the plaintiff's losses and expenses resulting from the interruption of the Plaintiff's business by COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other authorities.

3. A declaratory judgment that the defendant is responsible for timely and fully paying all such losses.

4. Damages.

5. Pre-judgment interest at the highest allowable rate.

6. Reasonable attorney fees and costs.

7. Such further and other relief as the Court shall deem appropriate.

VIII. JURY DEMAND

Plaintiff demands a jury trial on all claims so triable.

1 DATED this 24th day of September, 2020.

2 KELLER ROHRBACK L.L.P.

3 By: s/Amy Williams-Derry
4 By: s/Lynn L. Sarko
5 By: s/Ian S. Birk
6 By: s/Gretchen Freeman Cappio
7 By: s/Irene M. Hecht
8 By: s/Karin B. Swope
9 By: s/Maureen Falecki
10 By: s/Nathan L. Nanfelt
11 Amy Williams-Derry, WSBA #28711
12 Lynn L. Sarko, WSBA #16569
13 Ian S. Birk, WSBA #31431
14 Gretchen Freeman Cappio, WSBA #29576
15 Irene M. Hecht, WSBA #11063
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25 *Attorneys for Plaintiff*
26

CERTIFICATE OF SERVICE

I certify that on 24th day of September, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to all known counsel of record.

By: s/Amy Williams-Derry
Amy Williams-Derry

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